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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,783	12/08/2003	L. Dean Parks	1238.009	4821
27353 7590 01/29/2009 MELVIN K. SILVERMAN AND ASSOC'S PC 500 WEST CYPRESS CREEK ROAD SUITE 350 FT. LAUDERDALE, FL 33309				
EXAMINER PERREIRA, MELISSA JEAN				
ART UNIT		PAPER NUMBER		
1618				
MAIL DATE		DELIVERY MODE		
01/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/730,783

**Applicant(s)**

PARKS, L. DEAN

**Examiner**

MELISSA PERREIRA

**Art Unit**

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 11-16 are pending in the application. Any objections and/or rejections from previous office actions that have not been reiterated in this office action are obviated.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 11-16 have been considered but are moot in view of the new ground(s) of rejection.

#### ***New Grounds of Rejection***

##### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlman et al. (WO/9918800) in view of

3. Pearlman et al. (WO/9918800) discloses a topical composition comprising a pediculocide (i.e. ivermectin) with a pediculostatic agent (i.e. CETAPHIL ® cleanser) (abstract; p18, lines 14-16; p19, lines 19-28). The levels of active ingredient (i.e. ivermectin) may be from about 0.25% to about 2.5%. Pearlman et al. does not disclose a concentration of ivermectin from about 0.05 to about 0.1% (w/v).

4. Huet et al. (US 6,426,333B1) discloses of a spot-on formulation comprising an effective amount of an antiparasitic agent, i.e. ivermectin (column 4; column 6, lines 60+, especially line 65). Twelve male Beagle dogs were applied spot-on formulations combining ivermectin (0.1%, 0.25%, etc.) and fipronil where the formulations were applied at one spot onto the skin between the shoulder blades (example 7, table 8).

5. At the time of the invention it would have been obvious to include an active agent (i.e. ivermectin) in combination with CETAPHIL® cleanser as Pearlman et al. discloses such a composition and to utilize a concentration of ivermectin from 0.1, 0.25% as Huet et al. teaches such concentrations for a spot-on formulation. Both disclosures are drawn to the same utility, such as topical compositions comprising ivermectin and therefore it would have been obvious to one skilled in the art to utilize a topical CETAPHIL/ivermectin composition containing 0.1%, 0.25%. The ivermectin concentration (0.1%) encompasses the concentration of the instant claims (i.e. about 0.075%). The intended use of the dermatological composition is not afforded any patentable weight. "The recitation of a new intended use for an old product does not make a claim to that old product patentable." *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997). The topical compositions of the combined disclosures are capable of the same functions (i.e. treating transient acantholytic dermatitis, acne millaris necrotica, etc.) and have the same properties as the dermatological composition of the instant claims.

***Conclusion***

No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA PERREIRA whose telephone number is (571)272-1354. The examiner can normally be reached on 9am-5pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/  
Supervisory Patent Examiner, Art Unit 1618

/Melissa Perreira/  
Examiner, Art Unit 1618